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SUBJECT: PRIVATIZATION OF GON MINORITY SHAREHOLDINGS
IN FOREIGN OIL SERVICE COMPANIES POTENTIAL PROBLEM

[1](#)1. Action request, para 8.

[1](#)2. Summary. The Government of Nigeria (GON) wants to privatize the approximately forty percent minority share it holds in foreign oil service companies (OSCs) operating in Nigeria; e.g., in Halliburton Nigeria. The GON wants to divest itself by way of private placement; the OSCs object and insist that they be given right of preemption. The Bureau of Public Enterprises (BPE) has suggested that the GON's minority holdings be put into a special purpose vehicle (SPV), which would divest the GON of its share by way of public offers over time. The OSCs object and may seek DOS and DOC intervention. We seek the Departments' views to break the stalemate. End summary.

[1](#)3. Background. A little more than two years ago, Nigeria's National Council on Privatization instructed the BPE to sell the GON's minority shareholdings in the foreign OSCs. As noted above, the GON prefers divestiture by private placement; the OSCs, by preemption; and the BPE, by public offer. Since April 2001, the industry has argued that Nigeria's Commercial Activities and Allied Matters Act (CAMA) of 1990, the Investment Promotion Commission Act of 1995, and the Public Enterprise Act of 1999 justify preemption. As private companies, the OSCs argue that they enjoy right of preemption, as can be inferred from CAMA and convention. Moreover, since the GON holds only 36-40 percent equity in the ventures, the GON falls short of having the 75 percent required to block preemption. These arguments notwithstanding, President Obasanjo insists that the GON's minority shareholdings be sold to Nigerian investors.

[1](#)4. BPE constraints. On August 1, Econ Counselor met with Mrs. Bola Onagoruwa and Mr. Eyo Ekpo, senior officials of BPE's Oil and Gas Directorate. Ekpo expatiated on the political pressure the President is under to arrange for the sale of the GON's shares to the Nigerian public, and argued that the President will not cede on this principle. Ekpo expressed confidence that Nigerian law will permit such a sale. On the other hand, he dismissed an industry assertion that the U.S. SEC will compel U.S. parent companies of the majority stockholders to divest themselves of their Nigerian subsidiaries if Nigeria sells its share in the OSCs via a public offer.

[1](#)5. BPE margin. Onagoruwa added that were the President unconstrained, he would direct that BPE divest the GON of its shares via private placement. Well-connected Nigerians are urging him to do this. BPE's preference is that the GON's shares in the OSCs be sold to the majority stockholders, the foreign companies, on a willing buyer willing seller basis. BPE knows that such a sale would maximize the proceeds. Given the distance separating the President's and the industry's preferences, BPE has concluded that it may be able to arrange an agreement acceptable to the Presidency and the industry through the establishment of an SPV. Ekpo suggested to Econ Counselor that the details regarding the SPV could be worked out by BPE and the industry in a way to ensure that foreign companies' interests in the OSCs remain secured.

[1](#)6. OSCs position. The OSCs, through their KPMG representative, have informed us that they dislike the idea of further talks with BPE. They doubt that an accommodation can be reached. The OSCs propose instead that DOS and DOC and possibly the White House get involved.

17. Comment. We are not optimistic about a quick meeting of minds. The dispute has gone on two years. The Presidency and the OSCs are 180 degrees apart, and BPE is caught in the middle. Broad U.S. interests in Nigeria may dictate that the Embassy help hold the middle ground.

18. Action request. Post seeks specific guidance from Department on the official USG position regarding this issue and how active a role DOS, DOC, and White House are likely to play. We would also appreciate the Departments' independent views regarding the assertion that the U.S. SEC will likely compel U.S. parent companies of the majority stockholders to divest themselves of their Nigerian subsidiaries if the GON compels the sale of its shares in the OSCs via a public offer.

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